

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**NASIR-UDDIN QURESHI,**

**Plaintiff,**

**vs.**

**R.J. REYNOLDS TOBACCO  
CO., et al.,  
Defendants.**

**CIVIL ACTION NO. 04-CV-71810-DT**

**DISTRICT JUDGE NANCY G. EDMUNDS**

**MAGISTRATE JUDGE MONA K. MAJZOUB**

**REPORT AND RECOMMENDATION**

This Court recommends that Defendant RJ Reynolds CMS, Incorporated be  
**DISMISSED** without prejudice for lack of prosecution.

\* \* \* \* \*

On May 13, 2004 Plaintiff filed a Complaint in case number 04-CV-71810 against Defendants RJ Reynolds Tobacco Holding, Inc., Andrew Schinder, Lucinda Sheer, Christopher Pendy, Jill Morano, Beth Bommarito, and RJ Reynolds CMS, Incorporated Defendant RJ Reynolds Tobacco Company ("RJRTC") was not named in the Complaint but was substituted as a party by stipulation. Plaintiff was later granted leave to file an amended Complaint to add new anti-trust allegations against Defendant RJRTC on or before July 5, 2006. To date, Plaintiff has failed to file an amended Complaint. Furthermore, Defendant RJ Reynolds CMS, Incorporated has not been served with the Summons or the Complaint. On April 19, 2006 this Court ordered Plaintiff to show cause why Defendant RJ Reynolds CMS, Incorporated should not be dismissed pursuant to Fed.

R. Civ. P. 4(m). Plaintiff's response was due within 15 days of this Court's April 19, 2006 Order. Plaintiff did not respond.

Federal Rule of Civil Procedure 4 provides, in pertinent part:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed.R.Civ.P. 4(m). "Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal." *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996) (citing *Habib v. General Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994)). It is Plaintiff's burden to establish good cause for failing to timely effect service. *Habib*, 15 F.3d at 73. Further, Eastern District of Michigan Local Rule 41.2 provides that if the parties have not taken action within a reasonable time, the court may enter an order dismissing the case for lack of prosecution.

Plaintiff has failed to respond to the Court's Order to Show Cause. Therefore, this Court recommends that Defendant RJ Reynolds CMS, Incorporated be **DISMISSED** from this case without prejudice pursuant to Fed. R. Civ. P. 4(m) and E.D. Mich. LR 41.2. *Byrd v. Stone*, 94 F.3d at 219 (citing *Habib*, 15 F.3d at 73 ("Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.")).

#### **NOTICE TO PARTIES REGARDING OBJECTIONS**

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file

specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as "Objection #1," "Objection #2," etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as "Response to Objection #1," "Response to Objection #2," etc.

Dated: July 7, 2006

s/ Mona K. Majzoub  
**MONA K. MAJZOUN**  
**UNITED STATES MAGISTRATE JUDGE**

**Proof of Service**

I hereby certify that a copy of this Order was served upon Counsel of Record and Nasir-Uddin M. Qureshi on this date.

Dated: July 7, 2006

s/ Lisa C. Bartlett  
**Courtroom Deputy**